



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 210930-0203]

RIN 0648-BK80

Fisheries Off West Coast States; Effective Dates of West Coast Groundfish

Electronic Monitoring Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule revises regulations to delay implementation of the Electronic Monitoring (EM) Program for the West Coast Groundfish Trawl Rationalization Program. This action will delay implementation of the EM program until at least January 1, 2024. This change will provide additional time for industry and prospective service providers to prepare for implementation. The change is expected to strengthen Pacific Fishery Management Council and industry support for the EM program and may increase participation when the EM program is implemented.

DATES: Effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*]. Comments must be received by [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2021-0089 by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

Go to <https://www.regulations.gov> and enter NOAA-NMFS-2021-0089 in the Search box, click the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic Access

This interim final rule is accessible at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region website at: <https://www.fisheries.noaa.gov/region/west-coast> and at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/groundfish/fishery-management-plan/groundfish-amendments-in-development/>.

FOR FURTHER INFORMATION CONTACT: Colin Sayre, phone: 206-526-4656, or e-mail: colin.sayre@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 2019 (84 FR 31146), at the recommendation of the Pacific Coast Fishery Management Council (Council), NMFS published a final rule that authorized the use of EM in place of human observers to meet requirements for 100-percent at-sea monitoring for catcher vessels in the groundfish trawl catch share fishery (Trawl

Rationalization Program). EM video systems are used to record catch and discards by the vessel crew while at sea. Vessel operators are responsible for recording catch and discards in a logbook, which is then used to debit individual fishing quota (IFQ) accounts and cooperative allocations. After an EM vessel completes a fishing trip, the vessel operator submits the video data to their third-party EM service provider for analysis to be used to audit the vessel operator's self-reported discard logbooks. The June 2019 final rule established requirements for vessel owners and operators and EM service providers participating in the EM program, and for first receivers receiving catch from EM trips. The June 2019 rule had an implementation date of January 1, 2021.

At its June 2020 meeting, the Council recommended a delay in program implementation until January 1, 2022. The Council wanted to provide more time for industry and the Pacific States Marine Fisheries Commission (PSMFC) to develop a model for industry to fund PSMFC for review of video from their fishing trips. NMFS published a subsequent proposed rule (85 FR 53313; August 28, 2020) and final rule (85 FR 74614; November 23, 2020) that delayed implementation of the EM program until January 1, 2022 to provide additional time for industry and prospective service providers to prepare for implementation. PSMFC has been reviewing video data from the experimental EM Exempted Fishing Permit (EFP) program, funded by NMFS, since 2015. The Council recommended this delay, and NMFS implemented it, in order to increase industry buy-in and for success of the EM program at reducing monitoring costs for the fishery.

At the June 2021 meeting, the Council discussed delaying implementation of all EM program regulations until at least January 1, 2023. The Council and the industry have expressed interest in developing a mechanism for the industry to fund video review and storage by PSMFC, and reducing concerns regarding confidentiality and Federal record retention. The Council subsequently transmitted a letter to NMFS recommending a delay

in implementation of the EM program regulations and extending the EM EFPs. At its September 2021 meeting, the Council made a final recommendation that the EM program be delayed until January 2024 at the earliest. NMFS is implementing this recommendation through this interim final rule.

NMFS has already received applications from prospective companies interested in obtaining an EM service provider permit for 2022. NMFS intends to consider any permit applications already received when the permanent program begins. Any applications for EM service provider permits or EM Authorizations received by NMFS prior to *[insert date of publication in the FEDERAL REGISTER]* will be considered for future approval when the EM program becomes effective. When reviewing these applications, NMFS will issue a determination on whether it is necessary for applicants to submit updated or additional application materials.

Summary of Regulations

This action amends § 660.603(b), which describes EM provider permits and responsibilities, and § 660.604(e), which describes vessel and first receiver responsibilities. This interim final rule removes the specific dates by which NMFS will begin accepting EM service provider and EM Authorization permit applications for the 2022 fishing year. These dates were, respectively, May 1, 2021, and September 1, 2021. This rule will instead create a notification provision through which NMFS will provide public notice at least 90 days prior to the date on which it would begin accepting initial applications. As noted above, NMFS has already received several EM service provider permit applications and will consider and review these applications, in addition to any new applications, when the program is fully implemented. Upon review NMFS will make a determination regarding the status of each application and may request updated or additional information as necessary.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this interim final rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that, pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable, unnecessary, or contrary to the public interest. Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. This action has critical timing needs. The regulatory changes under this action must be in place prior to January 1, 2022, which is the current effective date of EM program regulatory requirements. If these changes are not in place before that date, NMFS would need to expend limited agency resources to temporarily implement the program (*i.e.* process, review and issue permits) until the rulemaking is completed. Additionally, the regulatory changes under this action must be published in advance of the January 1, 2022 effective date to ensure sufficient time to notify EM service providers and vessels potentially seeking to submit applications for EM authorizations for the 2022 fishing year about changes to the program. This advance notice will allow the EM service providers and vessels to better plan for the 2022 fishing year and avoid them committing time and resources to a program that will be delayed for at least two years. This action would change the effective date until such time as determined appropriate by NMFS and the Council to fully implement the EM program, no earlier than January 1, 2024. For these reasons, NMFS finds good cause exists to issue this interim final rule without advance notice in a proposed rule or an opportunity for public comment on this action. For the same reasons, NMFS also finds good cause, pursuant to 5 U.S.C. 553(d)(3), to waive the

30-day delay in the date of effectiveness, so that this interim final rule may become effective upon publication in the **Federal Register**.

Although NMFS is waiving prior notice and opportunity for public comment, we are requesting comments on this interim final rule until *[INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]*. NMFS encourages the public to participate in this rulemaking by submitting comments containing relevant information, data, or views. This interim final rule may be amended based on comments received. Please see **ADDRESSES** for more information on the ways to submit comments.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This final rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number(s): 0648-0785, West Coast Region Groundfish Trawl Fishery Electronic Monitoring Program.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: September 30, 2021.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C 7001 *et seq.*

2. In § 660.603, revise paragraph (b) introductory text to read as follows:

§ 660.603 Electronic monitoring provider permits and responsibilities.

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(b) *Provider permits.* To be an EM service provider, a person must obtain an EM service provider permit and endorsement by submitting an application to the NMFS West Coast Region Fisheries Permit Office. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM service provider permits for the first year of the Program. A person may meet some requirements of this section through a partnership or subcontract with another entity, in which case the application for an EM service provider permit must include information about the partnership. Once NMFS begins accepting applications, if a new EM service provider, or an existing EM service provider seeking to deploy a new EMS or software version, submits an application by June 1, NMFS will issue a new permit by January 1 of the following calendar year. Applications submitted after June 1 will be processed as soon as practicable. NMFS will only process complete applications. Additional endorsements to provide observer or catch monitor services may be obtained under § 660.18.

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3. In § 660.604 revise paragraph (e) introductory text to read as follows:

§ 660.604 Vessel and first receiver responsibilities.

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(e) *Electronic Monitoring Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, and then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM Authorizations for the first year of the Program. Once NMFS begins accepting applications, vessel owners that want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete application to NMFS by October 1. Vessel owners that want to have their EM Authorizations effective for May 15 must submit their complete application to NMFS by February 15 of the same year.

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